

EXHIBIT "A"

LEGAL DESCRIPTION

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A tract of land lying within the U.S. Government fee title boundary at Clarence Cannon Dam and Mark Twain Lake, Monroe City, Missouri, referenced as the Frank Russell Concession Area is hereinafter described:

A tract of land located in the Southwest Quarter, Southwest Quarter, Section 14, Township 55 North, Range 7 West. This tract contains approximately 40 acres.

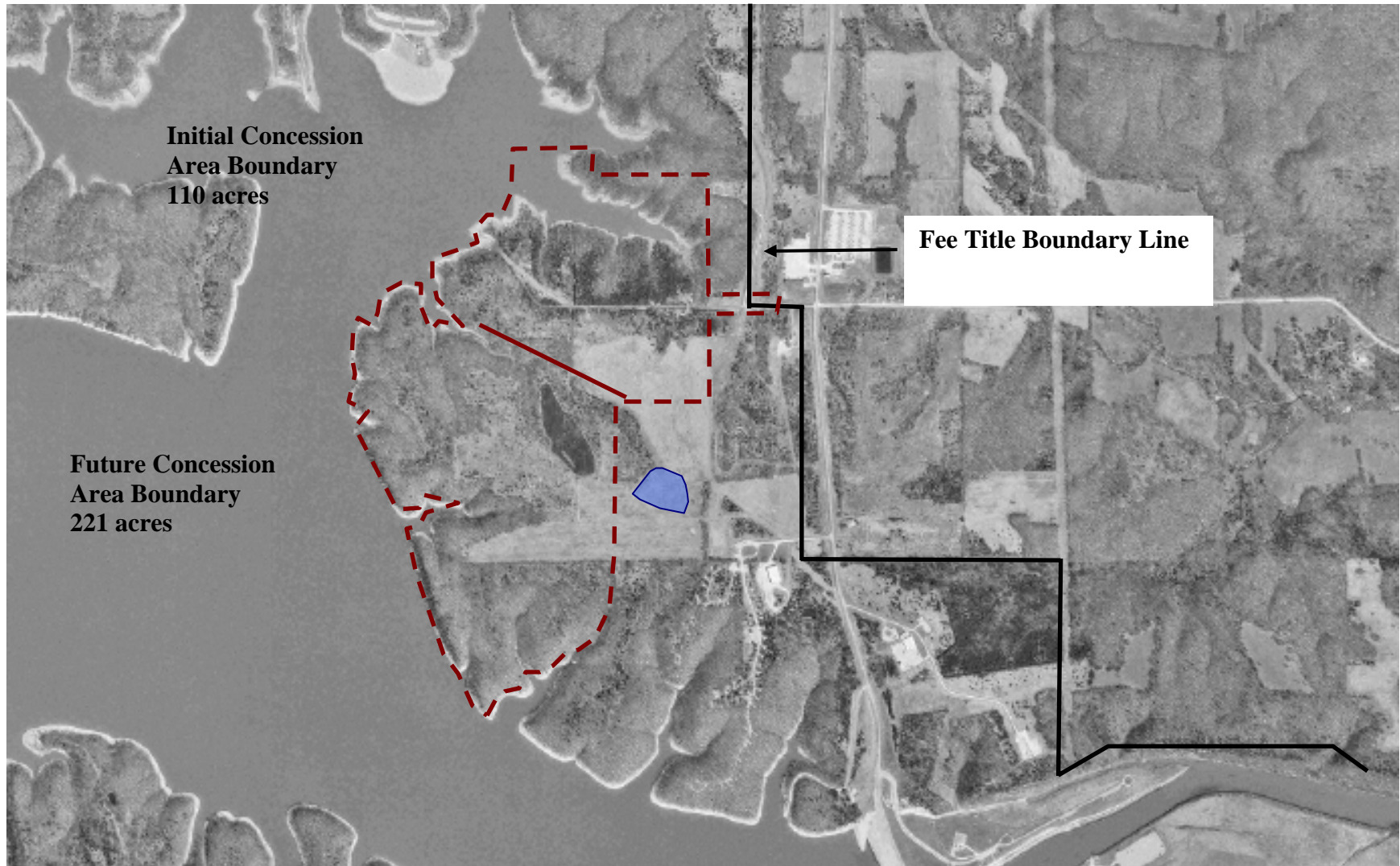
A tract of land located in the Southeast Quarter of Section 15, Township 55 North, Range 7 West. This tract contains approximately 60 acres.

A tract of land located in the Northeast Quarter of Section 22, Township 55 North, Range 7 West. This tract contains approximately 210 acres.

A tract of land located in the Northwest Quarter, Northwest Quarter, Section 23, Township 55 North, Range 7 West. This tract contains approximately 21 acres.

EXHIBIT "B"

SITE MAP



Clarence Cannon Dam and Mark Twain Lake, Frank Russell Recreation Area
Initial and Future Concession Area Boundary – 331 acres

EXHIBIT "C"

SAMPLE CONCESSION LEASE

NO. _____

**DEPARTMENT OF THE ARMY
LEASE
FOR COMMERCIAL CONCESSION PURPOSES**

**Frank Russell Recreation Area
Mark Twain Lake**

Ralls County, Missouri

THIS LEASE is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and **NAME OF LESSEE** hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) LETTERS, attached hereto and made a part hereof, hereinafter referred to as the premises, for commercial concession purposes.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said premises are hereby leased for a term of 25 years, beginning _____ and ending _____.

2. CONSIDERATION

a. The rent due to the United States in consideration of this lease shall be calculated using the revised Graduated Rental System (RGRS). The total gross receipts for each rental payment period will be multiplied by the applicable percentage rate and the resulting total due payable within twenty-five days to "F.A.O., USACE, St. Louis District" and delivered to the Chief, Real Estate Division, U. S. Army Corps of Engineers, St. Louis District.

The percentage rate for the upcoming rental year will be selected from the following RGRS rental rate chart, using the line for the total gross receipts of the ending rental year.

GROSS RECEIPTS (GR)	% RENT
Under \$50,000	2.0%
\$50,000-\$200,000	2.1%
\$200,001-\$400,000	2.2%
\$400,001-\$600,000	2.3%
\$600,001-\$800,000	2.4%
\$800,001-\$1,000,000	2.5%
\$1,000,001-\$1,200,000	2.6%
\$1,200,001-\$1,400,000	2.7%
\$1,400,001-\$1,600,000	2.8%
\$1,600,001-\$1,800,000	2.9%
\$1,800,001-\$2,000,000	3.0%
\$2,000,001-\$2,200,000	3.1%
\$2,200,001-\$2,400,000	3.2%
\$2,400,001-\$2,600,000	3.3%
\$2,600,001-\$2,800,000	3.4%
\$2,800,001-\$3,000,000	3.5%
\$3,000,001-\$3,200,000	3.6%
\$3,200,001-\$3,400,000	3.7%
\$3,400,001-\$3,600,000	3.8%
\$3,600,001-\$3,800,000	3.9%
\$3,800,001-\$4,000,000	4.0%
\$4,000,001-\$4,200,000	4.1%
\$4,200,001-\$4,400,000	4.2%
\$4,400,001-\$4,600,000	4.3%
\$4,600,001-\$4,800,000	4.4%
\$4,800,001-\$5,000,000	4.5%
\$5,000,001 and above	4.6%

(1) Gross receipts are defined as the total of the concessionaire's receipts from business operations conducted on the premises, including receipts of sub-lessees and licensees. No reductions are permitted except the costs of hunting and fishing licenses, and license fees and taxes collected for direct remittance to a taxing authority, and the exact amount collected from customers for electrical service which is metered to the customer and collected by the Lessee as the servicing agent and paid to the power company.

(2) The rental payment shall be quarterly with the first payment due _____. The rental year will be a partial year the first year, beginning on the date of this lease and ending on December 31, _____; for each rental year thereafter, the year will begin on 1 January and end on 31 December.

(3) RENTAL PAYMENT CALCULATION FORM

Reporting Period _____

a) Gross receipts for this period: \$ _____
b) Rental rate x _____
c) Amount due (a x b) \$ _____

IF OPTIONAL BOAT RATE SELECTED:

d) Boat and motor sales \$ _____
e) Rate x 0.01
f) Amount due (d x e) \$ _____

TOTAL DUE (c + f) \$ _____

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collections Act of 1982, 31 U.S.C. § 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from the due date. An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charges.

3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to Lessee's Name and Address, and if to the United States, to the District Engineer, Attn: Chief, Real Estate Division, 1222 Spruce Street, St. Louis, Missouri 63103-2833, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been given if and when enclosed in a properly sealed envelope or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any

reference to “Lessee” shall include sub-lessees, assignees, transferees, concessionaires, and its duly authorized representatives.

5. USE AND DEVELOPMENT OF THE PREMISES

a. The premises may be occupied and used by the Lessee or duly authorized agents, sublessees, assignees, or transferees solely for the conduct of business in connection with the recreational development of the premises for the general use of the public. Lessee shall provide facilities and activities in accordance with the Use and Development Plan and its architectural theme and sign plan, as supplemented or amended, (Development Plan) and attached hereto as Exhibit LETTER. The sign plan will be in accordance with the Sign Standards Manual, EP 310-1-6A, Chapter 17.

b. No Structure may be erected or altered upon the premises unless and until said Development Plan has been approved in writing by the District Engineer. The District Engineer may require the Lessee, upon completion of each of the proposed developments, to furnish a complete “as built” site plan and “as built” construction plans of all facilities with certification by a Professional Engineer that the construction meets all codes and standards.

c. The District Engineer may agree in writing to an extension of time for providing the facilities and activities designed in said Development Plan or may waive the providing thereof for other than those specified in the first lease year as designated in said Development Plan, whenever, in the opinion of the District Engineer, the public demand does not reach the anticipated level at the time stated, or when a delay in providing the facilities and services is beyond the control of the Lessee, provided, however, that at the discretion of the District Engineer, such undeveloped areas may be withdrawn from the leased premises.

d. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. Modifications to said Development Plan must be approved in writing by the District Engineer prior to implementation of the change.

e. All structures and equipment furnished by the Lessee shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**.

6. CONDITION OF PREMISES

The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

7. RATES AND PRICES

a. The rates and prices charged by the Lessee or its sub-lessees shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The District Engineer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. The Lessee shall keep such rates and prices posted at all times in an appropriate and conspicuous place on the premises. The District Engineer may require submission of a schedule of the rates and prices at any time.

b. However, no user fees may be charged by the Lessee or its sublessees for use of the facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

8. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or at the election of the District Engineer, reimbursement may be made therefore by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

9. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officer, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government purposes; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

10. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or employees others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

11. INSURANCE

a. At the commencement of this lease, the Lessee will obtain from a reputable insurance company, or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum Combined Single Limit of \$1,000,000, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee under the terms and conditions of this lease, and the Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, a certificate of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance coverage required. The policy shall provide that the insurance company give the District Engineer thirty (30) days written notice of any cancellation, non-renewal or change in such insurance.

b. The Lessee's sublessees and licensees, at the commencement of operating under the terms of this lease, shall obtain from a reputable insurance company or companies liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sublessees and licensees under the terms of this lease. The Lessee shall require any insurance carrier or carriers to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

c. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

12. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefore, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

13. NON-DISCRIMINATION

The Lessee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the premises. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

14. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also

provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the Lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards, and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the Lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply the applicable codes.

15. TAXES

Payment of any and all taxes imposed by the state or its political subdivisions upon the property or business of the Lessee on the premises is the responsibility of the Lessee.

16. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

17. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to Federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal Lands. Then Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

18. TRANSFERS, ASSIGNMENTS, SUBLEASES

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease or a controlling interest therein (including, without limitation, mergers, consolidations, reorganizations, or other business combinations), nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease, nor shall this lease be assignable or transferable by process or operation of law including, but not limited to insolvency proceedings, bankruptcy, or intestacy, or in any other manner whatsoever.

(1) Failure to comply with this condition or the procedures described herein shall constitute a material breach of this lease for which this lease may be revoked immediately by the District Engineer, and, the Secretary shall not be obligated to recognize any right of any person or entity to an interest in this lease or to own or operate the facilities authorized hereunder acquired in violation hereof.

(2) The Lessee shall advise the person(s) or entity proposing to enter into a transaction described in Subsection a. above that the District Engineer shall be notified and that the proposed

transaction is subject to review and approval by the District Engineer. The Lessee shall request in writing the District Engineer's approval of the proposed transaction and shall promptly provide the District Engineer all relevant documents related to the transaction, and the name(s) and qualifications of the person(s) or entity involved in the proposed transaction.

b. The District Engineer, in exercising discretion to approve or disapprove transfer, assignments, or subleases, shall among other matters take into consideration the management qualifications of the individuals or entities that would thereby obtain a controlling interest in the facilities or services authorized hereunder, the experience of such individuals or entities with similar operations, and the ability of such individuals or entities to operate the operations authorized hereunder in the public interest.

c. The term "controlling interest" in a Lessee's ownership shall mean, in the instance of a corporate Lessee, an interest beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of substantial managerial influence over the operations of the Lessee, and, in the instance of a partnership, joint venture, or individual Lessee, any beneficial ownership of the capital assets of the Lessee sufficient to permit substantial managerial influence over the operations of the Lessee. The District Engineer will determine at the request of interested parties whether or not an interest in a lease constitutes a controlling interest within the meaning hereof.

d. The Lessee may not enter into any agreement with any entity or person, except employees of the Lessee, to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without the prior written approval of the District Engineer.

e. No mortgage shall be executed, and no bonds, shares of stock, or other evidence of interest in, or indebtedness upon the assets of the Lessee located on the premises, including this lease, shall be issued, except for the purposes of installing, enlarging, refinancing or improving concession plant, equipment and facilities, provided that, such assets, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of a default on such a mortgage, encumbrance or other such indebtedness, or of other assignment, transfer, or encumbrance, the creditor or any assignee thereof shall succeed to the interest of the Lessee in such assets but shall not thereby acquire operating rights or privileges. Such rights or privileges shall be subject to disposition by the District Engineer.

f. The Lessee may allow independent private service companies to enter and conduct business on the premises for the benefit of the Lessee's customers on an as-called basis without a formal sublease or license agreement, provided that the service is occasional and incidental to the Lessee's operation and that any compensation paid to the Lessee is included in gross receipts.

g. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and with the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of its terms and conditions and continues and

persists in such non-compliance, or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving six months prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES**.

c. In addition to the above right of revocation, if the rent or other payments provided to be paid by the Lessee or any part thereof shall be in arrears and unpaid for thirty (30) days after the same shall become due, then, and in such case, the District Engineer may elect to revoke this lease by notification in writing to the Lessee.

20. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sublessee and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to the health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee will be obligated to pay rental, notwithstanding any interruption or suspension of activities. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

21. PUBLIC USE

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

22. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises. Specifically prohibited are the use of gambling devices, such as slot machines, video gambling machines, or other casino type devices that would detract from the family atmosphere. District Engineers may allow the sale of state lottery tickets, in accordance with state and local laws and regulations, as long as the sale of tickets constitutes a collateral activity, rather than primary activity, of the Lessee. The Lessee shall not install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit

them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

23. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **USE AND DEVELOPMENT OF THE PREMISES** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber.

24. ACCOUNTS AND RECORDS

a. The Lessee shall maintain complete and accurate records and no later than 120 days following the end of the Lessee's fiscal year shall submit to the District Engineer reports and data for the preceding year to include a financial statement for the activity covered by the lease and compiled by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state.

b. The District shall have the right at any time (1) to verify all financial reports and copy the books, correspondence, memoranda, income tax returns and other records of the Lessee and sublessees, if any, and of the records of proprietary or affiliated companies, if any, related to this lease during the period of the lease (This right shall extend for such time thereafter as may be necessary to accomplish such verification, but in no event more than five (5) years after the close of the business year of the Lessee); (2) to require the Lessee to furnish an audited statement of gross receipts for the concession operation, including the gross income of any sublease operation, and certification of the accuracy of the reported income.

c. Statements will be prepared by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state. Audits will be in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. Financial statements requiring audits and accompanied by remarks such as "prepared from client records without audit" are unacceptable. Audited and reviewed financial statements shall contain appropriate footnotes. The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial report are consistent with those included in the Federal tax returns. If the amounts are not consistent, then a statement showing the differences shall be included. An audit of Lessees tax returns is not required.

25. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued

by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, include sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

26. ENVIRONMENTAL BASELINE STUDY

An Environmental Baseline Study (EBS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as Exhibit LETTER. Upon expiration, revocation or termination of this lease, another EBS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

27. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

28. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

29. LIGHTS SIGNALS AND NAVIGATION

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not

otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained at the expense of the Lessee.

30. HUNTING AND TRAPPING

The Lessee shall not hunt or trap or allow hunting or trapping on the premises.

31. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for any period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites, said system to be acceptable to the District Engineer.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full or part-time residence is prohibited, except for employees, residing on the premises, for security purposes, if authorized by the District Engineer.

32. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. § 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to written decision by the District Engineer.

(2) For Lessee claims exceeding \$100,000, the Lessee shall submit with the claim a certification that:

- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and
- (iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

- (3) (i) If the Lessee is an individual, the certificate shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by:

(A) A senior company official in charge at the Lessee's location involved;

or

(B) An officer or general partner of the Lessee having overall responsibility of the conduct of the lessee's affairs.

d. For Lessee claims of \$100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files as suit as provided in the Act.

f. At the time a claim by the lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal or action arising under the lease, and comply with any decision of the District Engineer.

33. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

34. OFFICIALS NOT TO BENEFIT

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

35. SEVERAL LESSEES

If more than one Lessee is named in this lease the obligations of said Lessees herein contained shall be joint and several obligations.

36. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as all other conditions of this lease.

37. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U. S. C. § 403), and Section 404 of the Clean Water Act (33 U. S. C. § 1344).

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this _____day of _____, _____.

Witness

THOMAS R. HEWLETT
Chief, Real Estate Division
U.S. Army Corps of Engineers
St. Louis District

Witness

THIS LEASE is also executed by the Lessee this _____day of _____, _____.

Witness

NAME OF EXECUTING OFFICIAL
Title Line 1
Title Line 2

Witness

ACKNOWLEDGMENT

STATE OF _____)

: ss

COUNTY OF _____)

On this _____ day of _____, _____, before me the undersigned Notary Public, personally appeared _____, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

STATE OF _____)
: ss
CITY OF _____)

On this _____ day of _____, _____, before me the undersigned Notary Public, personally appeared **THOMAS R. HEWLETT**, Chief, Real Estate Division, U.S. Army Engineer District, St. Louis, Missouri, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:

THIS INSTRUMENT PREPARED BY:

Mary Winston, Realty Specialist
U.S. Army Corps of Engineers
1222 Spruce Street
St. Louis, Missouri 63103
314-331-8183

REVIEWED FOR LEGAL SUFFICIENCY BY:

Amy L. Klingemann, Attorney
314-331-8195

EXHIBIT "D"

SITE CONCEPT PLAN

**SITE CONCEPT PLAN
FRANK RUSSELL RECREATION AREA
MARK TWAIN LAKE, MISSOURI**

REQUIRED MINIMUM FACILITIES AND POTENTIAL FACILITIES

The premises are advertised for use by a lessee solely for the conduct of business in connection with the approved recreational development of the premises for the general use of the public as follows:

I. Hotel/Resort Development

In order to constitute a "Hotel/Resort Development" the concessionaire must provide quality facilities and services with the objective of satisfying public demand in the manner specified as follows:

II. Facilities and Services

A. Said business must provide and offer the following activities as a minimum, by no later than 24 months following the contract award:

All initial development will be constructed in the Initial Concession Area designated in EXHIBIT "B". Minimum facilities and services that will be provided by a prospective lessee include:

1. Resort/hotel complex. A minimum of 50 rooms is required.
2. Restaurant to accommodate 50 room resort/hotel development.
3. Access roads, asphalt, chip seal, or concrete accessing resort development from State Route J (1/2 mile).
4. Parking to accommodate 50 room resort/hotel/restaurant complex. (vehicle, vehicle and trailer combinations)
5. Electric utility infrastructure, water/sewer infrastructure (1/2 mile).
6. Boat mooring facility to accommodate hotel/resort and restaurant guests.

B. Optional facilities and services that prospective lessees may propose include:

1. Two-lane boat ramp, concrete construction with asphalt, chip seal, or concrete access road.

2. Hunting/fishing and ECO tourism guide services.

3. Sale of prepared foods, snacks, grocery items, prepackaged foods, snacks, refreshments, hunting and fishing equipment/supplies, fuel sales, marine supplies, gifts, personal care products and miscellaneous incidentals. Any products judged by the Government to be offensive will be removed upon notification. The sale of alcoholic beverages may or may not be approved. If approved, such sales will be subject to all federal, state and local laws and restrictions, as well as stringent requirements imposed by the District Engineer.

4. Other proposed public recreation related services and facilities as approved by the District Engineer.

III. Structures

A. Appurtenances

All facility and utility infrastructure upon fee title lands of the U.S. Government, developed in association with the resort/hotel concession, will be constructed and maintained by the concessionaire. Permanent improvements upon the area to be leased will remain on the premises, including:

1. Revetment
2. Roads, Access Trails
3. Parking Lot
4. Water, Electric, Sewer
5. Resort Facility
6. Boat Ramp

B. Special Notices

1. Sewage Treatment Facilities - The U.S Army Corps of Engineers Sewage Treatment Facility, located in the John Spalding Recreation Area, is capable of handling wastewater from a 75 room facility. If the development exceeds the capacity of the current facility, it will be the responsibility of the concessionaire to accommodate an expansion at the existing treatment facility to handle the additional wastewater load. Please note that expansion possibilities are limited, based upon minimal appropriate land base in immediate vicinity of sewage treatment facility.

2. Saddle Dam Protection - All utility infrastructure placed parallel with the proposed roadway will traverse an operational facility designated as the "Saddle Dam". Special construction considerations will be necessary during the utility placement/development.

3. References - Available on St. Louis District Home Page.

a. Marina Guidelines - The Corps follows the National Water Safety Congress Guidelines "Guides For Safe Operation and Maintenance of Marinas".

b. Corps Sign Manual.

EXHIBIT "E"

TOPOGRAPHIC MAP OF HARBOR

EXHIBIT "F"

PROJECT BROCHURE

EXHIBIT "G"

APPLICATION AND TRANSMITTAL FORM

APPLICATION AND TRANSMITTAL FORM
FRANK RUSSELL RECREATION AREA
MARK TWAIN LAKE, MISSOURI
NOTICE NO. DACW43-9-04-50

TO: Real Estate Division
ATTN: CEMVS-RE-A
St. Louis District, U.S. Army Corps of Engineers
1222 Spruce Street
St. Louis, Missouri 63103-2833

Sir:

In accordance with Notice No. DACW43-9-04-50, dated November 1, 2004, for the lease of a site for commercial development purposes at Frank Russell Recreation Area, Mark Twain Lake, Missouri, I hereby submit an original and five copies of the enclosed application, plans, and specifications and hereby agree:

a. To execute a lease within 10 days of receipt of the lease. The lease shall contain substantially the same terms and conditions included in the lease form attached as a part of this notice.

b. To pay rental in accordance with the schedule shown in Condition No. 2 of the attached lease.

c. That all information contained in this submittal is accurate as of the time of submission.

d. That all information contained in this submittal adheres to all local, state, and federal laws.

e. To furnish such additional information and data pertaining to qualifications and/or financial positions as the District Engineer may request.

f. That I have read Notice No. DACW43-9-04-50 entitled "Notice of Availability", and understand that the information contained therein is solely to provide notice to applicants. I further understand the final executed lease shall constitute the entire final agreement between the government and the successful applicant.

A check in the amount of \$300.00 payable to "Finance and Accounting Officer, USACE, St. Louis District" is enclosed as my nonrefundable application fee.

Sincerely,

EXHIBIT "H"

CERTIFICATE OF AUTHORITY

CERTIFICATE OF AUTHORITY

I, _____, certify that I am the _____ of
 _____; that _____ who signed the

 _____ of the

 _____ of the powers
 delegated to this officer by the governing body of the corporation in executing said instrument.

Date _____

Corporate Secretary or other appropriate officer
(Excluding the officer executing the instrument)

{ *Corporate Seal* }

EXHIBIT "I"

REQUIRED FORMS

APPLICANT

1. Name of Applicant:

2. Address of applicant for purposes of notice or other communication relating to the proposal:

Telephone number: _____

3. Date of Birth of Applicant: _____

4. Social Security Number of Applicant: _____

5. The applicant is a:

☐ Sole Proprietorship

☐ Partnership

☐ Corporation

☐ Other _____
Explain:

6. If applicable, provide name, address, date of birth, telephone number, and social security number of a representative authorized to act on behalf of the applicant during the course of the project.

PARTNERSHIP AGREEMENT

If applicant is a partnership, answer the following:

1. Date of organization: _____

2. General Partnership ☐
Limited Partnership ☐

3. Is Statement of Partnership recorded? Yes ☐ No ☐

Date	Book	Page	County
------	------	------	--------

4. Name, address, telephone number, date of birth, Social Security number, and partnership share for each partner. (If the space provided is not sufficient, please attach a separate sheet of paper with the appropriate information.)

5. Please ensure the following items are also included with this form:

(a) A complete copy of the Partnership Agreement

(b) An original copy of current credit information from a nationwide credit bureau for all major partners.

(c) A certified criminal background check for all major partners from each partner's local law enforcement agency to include a National Crime Information Center check.

CORPORATION STATEMENT

If applicant is a corporation, answer the following:

1. When incorporated? _____

2. Where incorporated? _____

3. Is the corporation authorized to do business in the State of Missouri?

Yes ☐ No ☐

4. The corporation is held:

Publicly ☐ Privately ☐

5. Number of shareholders _____

6. List all officers of the corporation

7. Please ensure the following items are also included with this form:

(a) Articles of Incorporation and by-laws, and a current certificate of good standing from the Secretary of State's office of the incorporating state.

(b) Corporate resolution approving the Application of a Certificate of Authority showing the authority of the person signing the Application and Transmittal Form to execute the form for the Corporation.

(c) Summary of Corporate Activity

(d) An original copy of current credit information from a nationwide credit bureau for all officers of the corporation.

(e) A certified criminal background check for all officers of the corporation from each officer's local law enforcement agency to include a National Crime Information Center check.

COST/REVENUE PROJECTION FORM

	FACILITIES	SERVICES	COST	SOURCE OF FUNDING	REVENUE GENERATED
1	Resort/hotel complex 50 room				
2	Restaurant to accommodate 50 room resort/hotel complex				
3	Two-Lane Boat Ramp (optional)				
4	Access roads, asphalt, chip seal, or concrete				
5	Parking spaces to accommodate 50 room resort/hotel/restaurant				
6	Electric utility infrastructure				
7	Water/Sewer Infrastructure				
8		Boat mooring			
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

EXHIBIT "J"

CHECKLIST

CHECKLIST

1. Did you read the enclosed information in its entirety?
2. Is all the information required in the section entitled REQUIRED APPLICANT INFORMATION enclosed?
3. Is EXHIBIT "G", APPLICATION AND TRANSMITTAL FORM signed, dated, and enclosed?
4. Is your nonrefundable check in the amount of \$300.00 made payable to "Finance and Accounting Officer, USACE, St. Louis District" enclosed?
5. If you are representing a corporation, is a corporate resolution or Certificate of Authority enclosed?
6. Did you include an original and five copies of all material in your application?
7. Did you properly address and mark the return envelope?

EXHIBIT "K"

APPLICATION EVALUATION MATRIX

Evaluation Factors SUMMARY

FACTOR 1 : Financial Capability		
Subfactor 1.1 Corporate Bank References		
Subfactor 1.2 Corporate Financial Statement		
Subfactor 1.3 Corporate Financial/Business Plan for first 5 years		
Subfactor 1.4 Letter of Credit of evidence of loans or loan eligibility from lending institution(s)		
FACTOR 2 : Proposed Development and Operations		
Subfactor 2.1 Design in accordance with Exhibit "D" entitled "Required Minimum Facilities and Potential Facilities"		
Subfactor 2.2 Design quality and nature of development		
Subfactor 2.3 Proposed operation of the development		
Subfactor 2.4 Proposed construction sequencing/phasing		
Subfactor 2.5 Compatibility with lake setting		
FACTOR 3 : Experience and Background		
Subfactor 3.1 Comparable corporate experience including environmental, size and diversity of operations		
Subfactor 3.2 Business experience and training - staffing, safety, security		
Subfactor 3.3 Current or previous corporate work with the Federal Government		
Subfactor 3.4 Business and personal references of Corporate Officers		
FACTOR 4 : Credit and Criminal Background Check		
Subfactor 4.1 Credit Check		
Subfactor 4.2 Criminal Background Check		

EVALUATION FACTORS MATRIX

FACTOR 1: FINANCIAL CAPABILITY		
<i>Subfactor</i>	<i>Evaluation Criteria</i>	<i>Proposal Content</i>
1.1. Corporate Bank References	<p>Failure of the applicant to include all required documents in support of its financial capability is grounds for immediate rejection.</p> <p>Consideration will be given to conformance to the NOA and overall understanding and reasonableness as related to the plans and specifications described.</p> <p>The financial statements provided must indicate signs of financial capability to perform in accordance with the 5-year development plan.</p> <p>Letters of credit, loan documents, and loan eligibility letters must demonstrate the ability of the applicant to obtain sufficient debt to finance the 5-year development plan.</p> <p>Cash Flow statements must adequately support the proposed 5-year development plan. In addition, statements must appear to be reasonable in view of supporting documentation of applicant's capacity to obtain debt.</p>	<ul style="list-style-type: none"> °5-year complete financial statements °original copy of credit references for all officers/partners/owners °current letters of credit, loan documents, or loan eligibility letters from lending institution(s) °5-year plan for development on the required form with 5-year annual cash flow statements °detailed plans of how the 5-year development will be financed (equity capital, interim financing, permanent financing, lending institution(s)) °significant cash assets °no significant liabilities °significant net income °no unusual expenses/liabilities
1.2 Corporate Financial Statement		
1.3 Corporate Financial/Business Plan for first five years		
1.4 Letter of Credit or evidence of loans or loan eligibility from lending institutions		

FACTOR 2: PROPOSED PLAN OF OPERATION AND DEVELOPMENT		
<i>Subfactor</i>	<i>Evaluation Criteria</i>	<i>Proposal Content</i>
2.1. Design in Accordance with Exhibit "D" entitled "Required Minimum Facilities and Potential Facilities"	Failure of the applicant to include all required documents in support of its plan of operation and development is grounds for immediate rejection. Consideration will be given to conformance to the NOA and overall understanding and reasonableness as related to the plans and specifications described.	°5-year Development Plan -management strategy -staffing plan -operational procedures -marketing plan -fee proposals °capital improvement plan °key positions within the corporation, duties, responsibilities, etc.
2.2 Design quality and nature of development		
2.3 Proposed Operation of the Development	The applicant will be evaluated on their plan to provide the "minimum facilities and services" as specified in the NOA Site Concept Plan. Applicants who propose to provide facilities and services that exceed the minimum requirements may be more favorably evaluated.	°conceptual site plan, to scale, depicting buildings, docks, platforms, roads, landscaping areas, and any other proposed facilities
2.4 Proposed construction sequencing/phasing		
2.5 Compatability with lake setting	Consideration will be given to conformance to the NOA and overall understanding and reasonableness as related to the plans and specifications described. The applicant will be evaluated on their plan to provide quality improvements that are safe, environmentally sensitive, and compatible with the recreational needs of the public. Offerors utilizing site-specific design, landscaping, etc., to improve the aesthetic impact of planned improvements may be more favorably rated. Offerors emphasizing compatibility of activities and or adequate buffering of incompatible activities will also be evaluated more favorably.	°specify, in conjunction with the conceptual site plan, basic materials, physical characteristics, make and manufacturer of docks, and design of buildings/facilities and landscaping areas

	<p>The applicant will be evaluated on the plan to provide services and facilities which are conducive to the many land and water based day-use activities while maintaining the integrity of the project's natural resources and family-oriented atmosphere.</p> <p>The applicant will be evaluated on their ability to commence and complete the development of the minimum proposed facilities within the stated terms of the lease. Applicants who demonstrate the ability and willingness to accelerate the development of services and facilities that exceed the minimum requirements may be more favorably evaluated.</p>	<p>°include in Development Plan proposed services to be offered as well as intended uses of facilities/structures and recreational areas.</p> <p>°schedule detailing the sequence of commencing and completing the minimum proposed facilities</p> <p>°schedule for completion of any optional facility and/or service, phased in over time</p>
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FACTOR 3: EXPERIENCE AND BACKGROUND		
<i>Subfactor</i>	<i>Evaluation Criteria</i>	<i>Proposal Content</i>
<p>3.1. Comparable experience</p> <p>3.2 Business experience and training</p> <p>3.3 Current or previous work with Federal Government</p> <p>3.4 Business and personal references of Officers</p>	<p>Failure of the applicant to include all required documents supporting experience and background is grounds for immediate rejection. Consideration will be given to conformance to the NOA and overall understanding and reasonableness as related to the plans and specifications described.</p> <p>The applicant will be evaluated on the success of previous or current business endeavors. Any type of business endeavor is of interest to the evaluation team.</p> <p>The applicant will be evaluated on the depth of management qualifications and corporate experience. Evaluation will be based on management qualifications, experience, and training in all business aspects, including industry specific aspects such as environmental, safety, security, staffing, etc.</p> <p>The applicant will be evaluated on references for all officers of the business.</p>	<p>°list of all previous corporate and self-employed business endeavors</p> <p>°management qualifications and experience</p> <p>°personal and business references of all officers</p> <p>°applicable corporate specific information</p> <p>°applicable partnership specific information</p> <p>°applicable sole proprietor information</p>

FACTOR 4: CREDIT AND CRIMINAL BACKGROUND CHECK		
<i>Subfactors</i>	<i>Evaluation Criteria</i>	<i>Proposal Content</i>
4.1 Credit Check 4.2 Criminal Background Check	<p>Failure of the applicant to include all required documents regarding credit check and criminal background check of Corporate Officers is grounds for immediate rejection.</p> <p>The applicant will be evaluated on his/her ability to provide the necessary background information and credit information requested. Applicants demonstrating a positive credit history and absence of a criminal background will be evaluated more favorably.</p>	<p>°original copy of current credit information from a nationwide credit bureau for all officers of the corporation</p> <p>°certified criminal background check for all officers of the corporation from each officer's local law enforcement agency to include a National Crime Information Center check</p>